

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

AJAY GAALLA, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. V-10-14
	§	
CITIZENS MEDICAL CENTER, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER

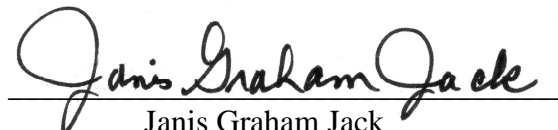
On this day came on to be considered Defendant Citizens Medical Center's Emergency Motion to Strike Plaintiffs' New Reply Evidence. (D.E. 220.)

Defendant CMC requests that this Court strike the evidence submitted with Plaintiffs' Reply brief on the pending Motion for Sanctions. (D.E. 218; 203.) As one court has explained, "where a movant has injected new evidentiary materials in a reply without affording the nonmovant an opportunity for further response, the court still retains the discretion to decline to consider them." Springs Indus., Inc. v. Am. Motorists Ins. Co., 137 F.R.D. 238, 240 (N.D. Tex. 1991); see Simmons v. T-Mobile USA, Inc., 2006 WL 3447684, at *1 (S.D. Tex. Nov. 22, 2006) (citing Springs). In the summary judgment context, the Fifth Circuit has similarly noted that "a district court may rely on arguments and evidence presented for the first time in a reply brief **so long as the court gives the nonmovant an adequate opportunity to respond.**" Vais Arms, Inc. v. Vais, 383 F.3d 287, 292 (5th Cir. 2004) (emphasis added). Thus, the Court has discretion in deciding whether to consider additional evidence submitted with a Reply, but the non-movant must be given an opportunity to respond to that evidence.

In this case, Plaintiffs filed a Reply with additional evidence on Friday, May 13, 2011, consistent with this Court's Order permitting additional briefing. (D.E. 217; 218.) Under the Court's Order, Defendant's surreply would be due on Monday, May 16, 2011 at 5:00 p.m., with a hearing on the sanctions motion to follow on Tuesday, May 17, 2011. (D.E. 217.) As Plaintiffs' reply relies upon and incorporates the additional evidence submitted therewith, striking that evidence would essentially prevent Plaintiffs from filing a full reply, an opportunity they have previously been granted. Nevertheless, in light of the fact that Plaintiffs have submitted a large amount of additional evidence, the Court is concerned that Defendant may not have an "adequate opportunity to respond" under the current schedule. Vais, 383 F.3d at 292. Defendant is therefore granted an extension until Friday, May 20, 2011 at 5:00 p.m. in which to file its Surreply Brief. The hearing presently scheduled for Tuesday, May 17, 2011 is reset to Wednesday, May 25, 2011 at 2:00 p.m.

For the reasons stated above, Defendant Citizens Medical Center's Emergency Motion to Strike Plaintiffs' New Reply Evidence is DENIED. (D.E. 220.) However, Defendant is granted an extension until Friday, May 20, 2011, in which to file a Surreply, and the hearing on Plaintiff's Motion for Sanctions is reset to Wednesday, May 25, 2011 at 2:00 p.m., so that Defendant may have an adequate opportunity to respond fully to Plaintiffs' Reply.

SIGNED and ORDERED this 16th day of May, 2011.


Janis Graham Jack
United States District Judge